

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

ENVIRONMENTAL DEFENSE FUND;
MONTANA ENVIRONMENTAL
INFORMATION CENTER; and CITIZENS
FOR CLEAN ENERGY,

Plaintiffs,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY; and ANDREW R. WHEELER, in
his official capacity as Administrator of
the U.S. Environmental Protection
Agency,

Defendants.

Case No.: 4:21-cv-00003-BMM-JTJ

The Honorable Brian Morris,
Chief Judge

**PLAINTIFFS' MOTION FOR EXPEDITED
PARTIAL SUMMARY JUDGMENT
(RELIEF REQUESTED BY JANUARY 28, 2021)**

Plaintiffs Environmental Defense Fund, Montana Environmental Information Center, and Citizens for Clean Energy hereby move for summary judgment on Count Two of their complaint, which claims that the U.S. Environmental Protection Agency violated the Administrative Procedure Act by making its final rule effective immediately on the rule's date of publication in the Federal Register rather than at least 30 days later, as 5 U.S.C. § 553(d) requires. For the reasons set forth in the accompanying brief and declarations, the plaintiffs respectfully request that the

Court hold unlawful and set aside the EPA’s decision to make the rule effective immediately, and declare that the rule is ineffective until 30 days from its date of publication. To ensure that the plaintiffs have a meaningful opportunity to exercise their right to petition the EPA before the rule becomes effective—and as further explained in the accompanying motion to expedite—the plaintiffs also respectfully request that the Court grant a partial final judgment under Rule 54(b) to that effect by January 28, 2021.

Because counsel for the defendants have not yet entered an appearance in this action, the plaintiffs have not consulted with the defendants about this motion, as contemplated by Local Rule 7.1(c)(1). In addition to the required service, the plaintiffs are providing courtesy notice the government of the filing of this lawsuit by simultaneous emails to the U.S. Attorneys’ Office and the relevant components of the U.S. Department of Justice.

January 11, 2020

Respectfully submitted,

/s/Deepak Gupta

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* *Pro hac vice* applications pending

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2021, I electronically filed this motion through this Court's CM/ECF system. I understand that notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

January 11, 2021

/s/ Derf Johnson
Derf Johnson